HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Single Bench : Hon'ble Shri Justice Vijay Kumar Shrivastava

Cr.M.P.No. 5 of 2006

APPLICANT — Niranjan Ray, S/o Late Sasodhar Ray, Aged about 45 years, R/o Marine Drive No.H/25, Ambikapur, District Sarguja (CG).

Versus

NON-APPLICANTS

1. State of Chhattisgarh, Through District Magistrate, Sarguja (CG).
2. Chitranjan, S/o Late Sasodhar Ray, Aged about 55 years.
3. Amit Ray, S/o Chitranjan Ray, Aged about 25 years.
4. Ashish Ray, S/o Chitranjan Ray, Aged about 22 years.

Non-applicants No.2 to 4 are R/o Village Bhagwanpur, Subhash Nagar, P.S. Dehat, Ambikapur, District Sarguja (CG).

Present :- Shri Shrawana Agrawal, counsel for the applicant.

Shri Sushil Dubey, Addl. Public Prosecutor/ Govt. Advocate for the State/respondent No.1.

Shri Ashok Kumar Shukla and Shri O.P. Yadav, counsel for respondents No.2 to 4.

ORAL ORDER
(Passed on 26th March, 2007)

This is a petition under Section 482 of the Code of Criminal Procedure (*for short "the Code"*) for setting aside the order dated 25-3-2006 passed by the Third Additional Sessions Judge, Ambikapur, Sarguja (Fast Track Court), in criminal revision No.80/2006.

2) Applicant – Niranjan Ray *hereinafter is referred to as "party No.2"* and non-applicants No.2, 3 & 4 Chitranjan, Amit Ray & Ashish Ray, *hereinafter are referred to "party No.1"*. The proceeding under Section 145 of the Code was initiated. Sub Divisional Magistrate, Ambikapur, (*for short "Magistrate"*), on 5-8-2003 passed a preliminary order under Section 145(1) of the Code and also passed an order under Section 146 of the Code whereby attached the disputed property. The party No.1 questioned the legality of order dated 5-8-2003 in criminal revision No.252/2003. Fourth Additional Sessions Judge, Ambikapur, vide order dated 10-2-2004 sustained the order passed by the Magistrate. On 1-2-2006 party No.2 filed an application for attachment of disputed property and appointment of receiver. Sub Divisional Magistrate passed an order "*write Station House Officer and Nayab Tehsildar for necessary action*". The order dated 1-2-2006 was questioned in criminal revision No.80/2006. Third Additional Sessions Judge, Ambikapur, Sarguja (Fast Track Court) vide impugned order dated 25-3-2006 set it aside and remanded back the case with direction to pass order in accordance with law, after affording opportunity of hearing to the parties.

3) Undisputedly after the order passed by the Magistrate on 5-8-2003 in its compliance the disputed property was attached and the attachment still continues, therefore, the question of reattachment does not arise. So far as appointment of receiver is concerned, if no receiver, in relation to subject of dispute, has been appointed by any civil Court, the Magistrate may appoint a receiver. The Magistrate has no jurisdiction to direct the Station House Officer and Nayab Tehsildar to take necessary action which means indirectly to appoint a receiver,

by them, therefore, it was incumbent on the Magistrate to decide the application on its own merits in accordance with law and the revisional Court vide impugned order did not commit any error by passing appropriate direction.

4) In the result, the impugned order passed by the revisional Court does not suffer from any infirmity or illegality, which may call for any interference of this Court. However, it is elucidated that, if in compliance of order of attachment earlier passed, property has already been attached; the Court should, in accordance with law, pass suitable orders under Section 146(2) of the Code.

5) With the aforesaid observations and directions the Cr.M.P. stands disposed of.

6) Consequently, application {M.(Cri.).P.No.1618/2006} for grant of stay also stands disposed of.

Sd/-
V.K. Shrivatava
Judge

Gowri